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SENATE BILL NO. 671

Offered January 23, 2004

A BILL to amend and reenact Chapter 460 of the Acts of Assembly of 2003, relating to medical assistance services; consumer-directed care; cash and counseling project waiver.

Patrons—Newman and Potts

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That Chapter 460 of the Acts of Assembly of 2003 is amended and reenacted as follows:

1. § 1. Medical assistance services; consumer-directed care waiver; Cash and Counseling Demonstration and Evaluation Grant.

A. The Department of Medical Assistance Services shall, *when appropriate and practicable*, prepare and may seek approval for an application for (i) a revision of the consumer-directed personal care services waiver to allow spouses, parents, adult children, and guardians to direct care on behalf of the waiver recipient, when such recipient is incapable of directing such care on his own behalf and (ii) a new waiver for home- and community-based services, as soon as such waiver template shall become available. Any such waiver revision or new waiver shall be cost-neutral and shall expand consumer-directed care in so far as practicable. Any such waiver application shall protect the health and safety of recipients as well as the fiscal integrity of the Commonwealth. Such waiver shall provide for a fiscal agent to handle tax issues and payment of personal attendants on the part of recipients. In addition, any such waiver application shall (i) provide recipients with flexible choices and personal independence in so far as possible and (ii) include provisions for family members to deliver the covered services when consistent with and not prohibited by federal law and regulation.

B. *Further, contingent on receiving (i) approval by the Robert Wood Johnson Foundation of a Cash and Counseling Demonstration and Evaluation grant or (ii) a state appropriation for the contracting or hiring of a fiscal agent and appropriate staff to implement such project, the Department of Medical Assistance Services shall develop and submit an application for a research and demonstration project pursuant to § 1115 of the Social Security Act, 42 U.S.C. § 1315, for a Cash and Counseling Demonstration and Evaluation project to be implemented in two demonstration areas, i.e., Lynchburg and Winchester.*

C. Neither this act nor any new or revised project that may be, but is not required to be, implemented pursuant to this act shall be construed as creating any legally enforceable right or entitlement to consumer-directed care, the Virginia Plan for Medical Assistance Services, or Title XIX of the Social Security Act, as amended, on the part of any person or to create any legally enforceable right or entitlement to participation in any consumer-related care *project* by any person.

2. That, upon the approval by the Centers for Medicare and Medicaid Services of any application for revision of the consumer-directed personal care services waiver or for any new waiver submitted pursuant to this act or any waiver for a Cash and Counseling Demonstration and Evaluation project that may be submitted by the Department of Medical Assistance Services pursuant to this act, expeditious implementation of any revised or new consumer-directed care services shall be deemed to be an emergency situation pursuant to § 2.2-4002 of the Administrative Process Act; therefore, to meet this emergency situation, the Board shall promulgate emergency regulations to implement the provisions of this act.

3. That, in order to avoid costs as much as possible during the regulatory process for the implementation of any waiver pursuant to this act, the Board of Medical Assistance Services shall, when in compliance with the Administrative Process Act (§ 2.2-4000 et seq.), notify, distribute, and provide public access and opportunity for comment via electronic media, including, but not limited to, posting documents to and receiving comments via the Department's website, by e-mail and fax. The Board shall, however, continue to provide public notice and participation to those persons who do not have access to the Internet or other forms of electronic media.

INTRODUCED

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